



Department of Justice

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MICROSOFT AGREES TO END UNFAIR MONOPOLISTIC PRACTICES

WASHINGTON, D.C. -- Microsoft, the world's largest and dominant computer software company, agreed to end its illegal monopolistic practices after the Department of Justice charged that the company used unfair contracts that choked off competition and preserved its monopoly position.

The company agreed to settle the charges with a consent decree that will prohibit Microsoft from engaging in these monopolistic practices in the future.

Microsoft, which makes the MS-DOS and Windows operating systems used in more than 120 million personal computers, was accused of building a barricade of exclusionary and unreasonably restrictive licensing agreements to deny others an opportunity to develop and market competing products.

Attorney General Janet Reno said, "Microsoft's unfair contracting practices have denied other U.S. companies a fair chance to compete, deprived consumers of an effective choice among competing PC operating systems, and slowed innovation.

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Today's settlement levels the playing field and opens the door for competition."

"Microsoft is an American success story but there is no excuse for any company to try to cement its success through unlawful means, as Microsoft has done with its contracting practices," said Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division.

The settlement is the result of close coordination between the Department of Justice and the competition enforcement authorities of the European Commission, which has been investigating Microsoft since mid-1993, and which also initiated an undertaking containing essentially the same terms. This complaint and settlement marks the first coordinated effort of the two enforcement bodies in initiating and settling an antitrust enforcement action.

Bingaman, praised the Commission, noting that, "This unprecedented, historic cooperative action sends a powerful message to firms around the world that the antitrust authorities of the United States and the European Commission are prepared to move decisively and promptly to pool resources to attack conduct by multinational firms that violate the antitrust laws of the two jurisdictions."

The civil complaint and consent decree were filed last night, July 15, in U.S. District Court in Washington, D.C. The consent decree, if approved by the court, would settle the suit.

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Until approved, Microsoft has agreed in a stipulation filed with the court to abide by the terms of the decree.

The Department alleged that Microsoft used the following unfair practices:

Exclusionary Per Processor Licenses--Microsoft makes its MS-DOS and Windows technology available on a "per processor" basis, which requires PC manufacturers to pay a fee to Microsoft for each computer shipped, whether or not the computer contains Microsoft operating system software. The complaint alleges that this arrangement gives Microsoft an unfair advantage by causing a manufacturer selling a non-Microsoft operating system to pay at least two royalties--one to Microsoft and one to its competitor--thereby making a non-Microsoft unit more expensive.

"Microsoft has used its monopoly power, in effect, to levy a "tax" on PC manufacturers who would otherwise like to offer an alternative system," said Bingaman. "As a result, the ability of rival operating systems to compete has been impeded, innovation has been slowed and consumer choices have been limited." She noted that Microsoft has maintained the price of its operating systems while the price of other components has fallen dramatically. Since 1988, Microsoft's share of the market has never dropped below 70 percent.

Unreasonably Long Licenses--The Department further alleged that Microsoft's contracts are unreasonably long. By binding manufacturers to the purchase of Microsoft products for an

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excessive period of time, beyond the lifetime of most operating system products, the agreements foreclose new entrants from gaining a sufficient toe-hold in the market.

Restrictive Non-Disclosure Agreements--The Department also charged that Microsoft introduced overly restrictive non-disclosure agreements to unreasonably restrict the ability of independent software companies to work with developers of non-Microsoft operating systems. Microsoft sought the agreements from companies participating in trial testing of the new version of Windows, to be released later this year. The terms of these agreements preclude applications developers from working with Microsoft's competitors for an unreasonable amount of time.

The settlement ends these practices and will help to rectify the effects of Microsoft's past unlawful conduct. In particular, the settlement prohibits Microsoft from:

- Entering into per processor licenses.

- Obligating licensees (manufacturers of personal computers) to purchase any minimum number of Microsoft's operating systems;

- Entering into any licenses with terms longer than one year (although licensees may renew for another year on the same terms).

- Requiring licensees to pay Microsoft on a "lump sum" basis.

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--Requiring licensees to purchase any other Microsoft product as a condition for licensing a particular Microsoft operating system.

--Requiring developers of applications software to sign unlawfully restrictive non-disclosure agreements.

The settlement is effective immediately and will be in effect for six and a half years.

Bingaman said "this settlement resolves the competitive problems created by Microsoft's unlawful conduct quickly and effectively."

Microsoft's main corporate office is in Redmond, Washington.

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